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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,042	06/28/2001	Dane R. Jackson	460.2125USU	5504

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/894,042

Applicant(s)

JACKSON ET AL.

Examiner

Dennis Ruhl

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-20 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 15 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3761

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claims 13,15,16,17,19,21,22, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5,6,10-12,17,18,23,24, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 5,17,23, the language "corresponds to a separate one of said...." is confusing to the examiner. What does this mean? What is a separate one? This claim is considered indefinite.

With respect to claims 6,18,24, the examiner is confused as to how applicant can recite that the gripping structure is "other than a rib" but at the same time recites "grooves" and "louvers" which would inherently result in ribs being present. The embodiment of louvers would have ribs and the louvers would each define a rib. If you had grooves the area between the grooves could be considered a rib. The scope of this claim is not clear because the claim seems to exclude ribs but recites structure that has ribs. This claim is considered indefinite.

Art Unit: 3761

With respect to claim 10, the last member of the Markush group makes no sense to the examiner. What is "of said ....surface."? This is not clear to the examiner.

With respect to claim 11, this claim presents a combination/subcombination problem. The independent claim does not have the plunger as part of it's scope because the barrel is only recited as being adapted to house a plunger. No plunger was claimed. In claim 11 it appears that applicant is claiming a plunger. It is not clear to the examiner whether or not applicant is claiming a barrel and a plunger or just the barrel itself.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6,8-14,16-18,19,20,22-24, are rejected under 35 U.S.C. 102(b) as being anticipated by Lichstein et al. (4536178) .

With respect to claims 1,2,6,8-12, Lichstein discloses a barrel 16 that has a fingergrip area 32. The fingergrip area has two flattened surfaces 30. The gripping structure is considered to be the concavity or depression that is disclosed in column 4, lines 14-24.

With respect to claim 3, Lichstein discloses an odd number of flat surfaces. The 3<sup>rd</sup> flat surface is the very end of the barrel itself, which is flat.

With respect to claims 4,5 (as best understood by the examiner), the 2 angles surfaces are 34.

Art Unit: 3761

With respect to claims 13,14,16,17 (as best understood), Lichstein discloses a barrel 16 with a gripping area 32. The gripping area has two convex surfaces which are the portions of 32 that are convex (between the flat surfaces 30). The gripping structure is considered to be the flat surfaces 30 themselves along with angles shoulders 34. The surfaces 30 and 34 are not a rib.

With respect to claim 18, surfaces 30 and 34 define a groove or even an embossment with respect to the remainder of the barrel.

With respect to claims 19,20,22,23 (as best understood), Lichstein discloses a barrel 16 with a gripping area 32. The gripping area has two concave surfaces which are considered to be the depressions that are disclosed in column 4, lines 14-24. The gripping structure is considered to be the flat surfaces 30 themselves along with angles shoulders 34. The surfaces 30 and 34 are not a rib.

With respect to claim 24, surfaces 30 and 34 define a groove or even an embossment with respect to the remainder of the barrel.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

Art Unit: 3761

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1,7, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lichstein et al. in view of Voss (3575169).

Lichstein discloses a barrel 16 that has a fingergrip area 32. The fingergrip area has two flattened surfaces 30. Lichstein discloses a gripping structure in the form of ribs (raised above the surface as claimed). Lichstein does not disclose the fingergrip area as being other than ribs. Voss discloses numerous fingergrip aids that will aid the user when using the applicator. Voss discloses that a highly abrasive outer surface is desirable and discloses a gripping aid in the form of a plurality of abrasive particles adhered to the outer surface of the rear end of the barrel. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Lichstein with highly abrasive particles for a gripping structure as disclosed by Voss so that the gripping structure could provide maximum grip to the user.

9. Claims 15,21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR  
January 14, 2002

A handwritten signature in black ink, appearing to read 'D. Ruhl', with a stylized, flowing script.

**DENNIS RUHL**  
**PRIMARY EXAMINER**